In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 382

GRANVILLE GEORGE HUDSON AND
CARLOS ASDRUBAL MATOS-JORDAN,
PETITIONERS

v.

P. A. ESPERDY, DISTRICT DIRECTOR OF THE
IMMIGRATION AND NATURALIZATION SERVICE
OF THE UNITED STATES FOR THE
NEW YORK DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 9-10) is reported at 290 F.2d 879.

JURISDICTION

The judgment of the court of appeals was entered on June 1, 1961. Petitioners' motion for a rehear-

ing was denied on June 26, 1961. The petition for a writ of certiorari was filed on September 1, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether violation of Section 722(8) of the New York Penal Law, forbidding solicitation for the purpose of commiting a crime against nature, constitutes a crime involving moral turpitude, within the meaning of Section 241(a)(4) of the Immigration and Nationality Act.

2. Whether Section 241(a)(4) of the Immigration and Nationality Act, providing for deportation of aliens convicted of crimes involving moral turpitude, is void for vagueness.

STATUTES INVOLVED

Section 241(a) of the Immigration and Nationality Act, 8 U.S.C. 1251(a), provides in pertinent part:

> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * * *
>
> (4) * * * at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial * * *.
>
> * * * *

Section 722 of the New York Penal Law provides in pertinent part:

> Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> * * * *
>
> (8) Frequents or loiters about any public place soliciting men for the purpose of committing a crime against nature or other lewdness * * *.
>
> * * * *

STATEMENT

Each petitioner herein has been ordered to be deported, pursuant to the provisions of Section 241 (a) (4) of the Immigration and Nationality Act, for two violations of Section 722(8) of the New York Penal Law. The facts as to each petitioner may be summarized as follows:

1. Petitioner Hudson entered the United States for permanent residence from the Bahamas on June 23, 1913, and has since resided here. On March 21, 1937, and on August 29, 1944, he was convicted for violations of Section 722(8) of the New York Penal Law. On June 4, 1958, he was served with an order to show cause why he should not be deported, by reason of such violations, under Section 241(a)(4) of the Immigration and Nationality Act. His appeal to the Board of Immigration Appeals was dismissed. Thereafter, he brought a declaratory judgment action in the United States District Court for the Southern

District of New York, asking that the court restrain the enforcement of the deportation order (R. 11-13, 26-27).

2. Petitioner Matos-Jordan was admitted to the United States for permanent residence from the Dominican Republic in 1946, and has since resided here. He was convicted of violations of Section 722 (8) of the New York Penal Law in 1947 and in 1952. By reason of these convictions, he was ordered deported in 1957, after a hearing and administrative review. He filed a petition for review to restrain the enforcement of the order in the United States District Court for the Southern District of New York (Pet. 3; R. 6-7).

Motions by the district director for summary judgment in each case were sustained (R. 2-4). Because of the identity of the issues, the appeals were consolidated (R. 19-22). The court of appeals affirmed (Pet. 9-10).

ARGUMENT

1. Violation of the New York statute here involved was held to be a ground for deportation of an alien in *Babouris* v. *Esperdy*, 269 F. 2d 621 (C.A. 2), certiorari denied, 362 U.S. 913, and for exclusion of an alien, in *United States* v. *Flores-Rodriguez*, 237 F. 2d 405, 409 (C.A. 2). See also *Wyngaard* v. *Rogers*, 187 F. Supp. 527 (D.D.C.). Petitioners urge (Pet. 5-6) that these cases should be overruled on the ground that a lesser quantum of proof is required for conviction under the New York statute than under a

similar District of Columbia statute, as interpreted in *Kelly* v. *United States*, 194 F. 2d 150, 154-155 (C.A. D.C.), and that therefore an alien charged with a violation of the New York statute is not afforded the same procedural safeguards as the alien charged with a violation of the District of Columbia statute. But whether evidence does or does not support a conviction is a matter to be determined in the particular proceeding. The Immigration Service cannot undertake to examine the sufficiency of the evidence that underlies a conviction.[1] The fact is that petitioners were twice charged and convicted of deportable offenses and were therefore properly found deportable.

2. The question whether Section 241(a)(4) of the Immigration and Nationality Act is sufficiently definite to meet constitutional requirements is no longer open for consideration in view of this Court's decision in *Jorden* v. *DeGeorge*, 341 U.S. 223. Petitioners present no reasons for reconsideration of that decision.

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[1] There is no showing in the present cases as to what evidence supports the two state convictions against each of the petitioners.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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